



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9954]

RIN 1545-BN80

Treatment of Distributions of Property From a Corporation to a Shareholder

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 301 of the Internal Revenue Code of 1986 (Code). These regulations update existing regulations under section 301 to reflect statutory changes made by the Technical and Miscellaneous Revenue Act of 1988, which changes provide that the amount of a distribution of property made by a corporation to its shareholder is the fair market value of the distributed property. The regulations affect shareholders that receive a distribution of property from a corporation.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see § 1.301-1(f)(3), (m)(4), and (n).

FOR FURTHER INFORMATION CONTACT: Grid R. Glycer, (202) 317-6847 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1 under section 301 of the Code relating to the treatment of distributions of property from a corporation to a shareholder. Section 301 provides rules for the treatment of a distribution of property,

including money, made by a corporation to its shareholder with respect to that shareholder's stock ownership in that corporation (distribution).

Section 1006(e)(10) and (e)(11) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, 102 Stat. 3342 (1988) (Act), amended section 301(b)(1) and (d), respectively (such amendments, the 1988 Amendments). Section 1019(a) of the Act provided that, in general, the 1988 Amendments were effective as if included in the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085 (1986). Accordingly, the 1988 Amendments generally are effective for taxable years beginning after December 31, 1986.

As a result of the 1988 Amendments, section 301(b)(1) provides that, for purposes of section 301, the amount of any distribution is the amount of money received plus the fair market value of the other property received. Section 301(d) provides that the basis of property received in a distribution to which section 301(a) applies is the fair market value of such property.

The current regulations issued under section 301 reflect the rules of sections 301(b)(1) and 301(d) as they existed prior to the 1988 Amendments. Accordingly, to the extent preempted by statute, the current regulations have no application.

A notice of proposed rulemaking (REG-121694-16) published in the **Federal Register** on March 26, 2019 (84 FR 11263) proposed to amend §1.301-1 to reflect the 1988 Amendments (2019 proposed regulations). The scope of the 2019 proposed regulations was limited to (1) deleting provisions made obsolete by statutory changes, (2) making minor additions and revisions to reflect current statutory text, and (3) making certain non-substantive changes for purposes of clarity and readability, including reordering and redesignating paragraphs. The 2019 proposed regulations also amended cross-references in §§1.356-1(f), 1.368-2(m)(3)(iii), 1.902-1(a)(12), and 1.902-3(a)(7) to reflect the proposed reordering and redesignating of paragraphs in §1.301-1.

For further discussion of the changes proposed to be made to §1.301-1 by the 2019 proposed regulations, see the Explanation of Provisions section in the preamble to the 2019 proposed regulations at 84 FR 11264.

The Department of the Treasury (Treasury Department) and the IRS received no comments on the 2019 proposed regulations, and no public hearing was requested or held. This document adopts the 2019 proposed regulations as final regulations with no substantive changes and with certain non-substantive changes for purposes of clarity and readability.

Applicability Date

The final regulations apply to distributions made after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, these regulations update the previous regulations under section 301 to reflect statutory changes made by the 1988 Amendments, which apply to distributions made in taxable years beginning after December 31, 1986.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. The Treasury Department and the IRS have determined that no additional burden will be associated with these final regulations. Therefore, a regulatory flexibility analysis is not required. Accordingly, the Secretary's delegate

certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Drafting Information

The principal author of these regulations is Grid R. Glyer of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in developing these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAX REGULATIONS

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.301-1 is revised to read as follows:

§1.301-1 Rules applicable with respect to distributions of money and other property.

(a) General. Section 301 provides the general rule for the treatment of distributions made in taxable years beginning after December 31, 1986, of property by a corporation to a shareholder with respect to its stock. The term property is defined in section 317(a). Except as otherwise provided in chapter 1 of the Internal Revenue Code (Code), such distributions are treated as provided in section 301(c). Under section 301(c), distributions may be included in gross income to the extent the amount

distributed is considered a dividend under section 316, applied against and reduces the adjusted basis of the stock, treated as gain from the sale or exchange of property, or exempt from Federal income tax in the case of certain distributions out of increase in value accrued before March 1, 1913. The amount of a distribution to which section 301 applies is determined in accordance with the provisions of section 301(b). The basis of property received in a distribution to which section 301 applies is the fair market value of the property, as provided in section 301(d).

(b) Amount of distribution and determination of fair market value. The amount of a distribution to which section 301 applies is the amount of money received in the distribution, plus the fair market value of other property received in the distribution. The fair market value of any property distributed is determined as of the date of the distribution.

(c) Time of inclusion in gross income and time of determination of fair market value. A distribution made by a corporation to its shareholders is included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands, without regard to whether such date is the same as that on which the corporation made the distribution. For example, if a corporation distributes a taxable dividend in property on December 30, 2021, that is received by, or unqualifiedly made subject to the demands of, its shareholders on January 3, 2022, the amount to be included in the gross income of the shareholders will be the fair market value of such property on December 30, 2021, determined under paragraph (b) of this section, although such amount will not be includible in the gross income of the shareholders until January 3, 2022.

(d) Application of section to shareholders. Section 301 is not applicable to an amount paid by a corporation to a shareholder unless the amount is paid to the shareholder in the shareholder's capacity as such.

(e) Example. Corporation M, formed in 1998, has never been an acquiring corporation in a transaction to which section 381(a) applies. On January 1, 2021, A, an individual, owned all of the stock of Corporation M, consisting of a single share with an adjusted basis of \$2,000. During 2021, A received distributions from Corporation M totaling \$30,000, consisting of \$10,000 in cash and listed securities having a basis in the hands of Corporation M and a fair market value on the date distributed of \$20,000. Corporation M's taxable year is the calendar year. As of December 31, 2020, Corporation M had accumulated earnings and profits in the amount of \$26,000, and it had no earnings and profits and no deficit for 2021. Of the \$30,000 received by A, \$26,000 is treated as an ordinary dividend; of the remaining \$4,000, \$2,000 is applied against and reduces the adjusted basis of A's stock under section 301(c)(2), and the \$2,000 in excess of the adjusted basis of A's stock is treated as gain from the sale or exchange of property under section 301(c)(3)(A). If A immediately sells the stock in Corporation M, the basis for determining gain or loss on the sale will be zero.

(f) Reduction for liabilities--(1) General rule. For purposes of section 301(b)(2), no reduction in the amount of a distribution is made for the amount of any liability, except to the extent the liability is assumed by the shareholder within the meaning of section 357(d).

(2) No reduction below zero. Any reduction pursuant to paragraph (f)(1) of this section does not cause the amount of the distribution to be reduced below zero.

(3) Applicability dates--(i) In general. This paragraph (f) applies to distributions occurring after January 4, 2001.

(ii) Retroactive application. For distributions made on or before January 4, 2001, see §1.301-1(g) as contained in 26 CFR part 1 revised April 1, 2021.

(g) Basis. The basis of property received in a distribution to which section 301 applies is the fair market value of such property. See paragraph (b) of this section.

(h) Transfers for less than fair market value. If property is transferred by a corporation to a shareholder for an amount less than its fair market value in a sale or exchange, such shareholder is treated as having received a distribution to which section 301 applies. In such case, the amount of the distribution is the excess of the fair market value of the property over the amount paid for such property at the time of the transfer. For example, on January 3, 2021, A, a shareholder of Corporation X, purchased property from X for \$20 when the fair market value of such property was \$100. The amount of the distribution to A determined under section 301(b) is \$80.

(i) [Reserved]

(j) Transactions treated as distributions. A distribution to shareholders with respect to their stock is within the terms of section 301, although it takes place at the same time as another transaction, if the distribution is in substance a separate transaction (whether or not connected in a formal sense). This situation is most likely to occur in the case of a recapitalization, a reincorporation, or a merger of a corporation with a newly organized corporation having substantially no property. For example, if a corporation having only common stock outstanding exchanges one share of newly issued common stock and one bond with a principal amount of \$10 for each share of outstanding common stock, the distribution of the bond will be a distribution of property (to the extent of its fair market value) to which section 301 applies, even though the exchange of common stock for common stock may be pursuant to a plan of reorganization under the terms of section 368(a)(1)(E) (recapitalization) and may result in the shareholder not recognizing any gain or loss on the exchange by reason of section 354.

(k) Cancellation of indebtedness. The cancellation of indebtedness of a shareholder by a corporation is treated as a distribution of property.

(l) Cross-references. For certain rules relating to adjustments to earnings and profits and for determining the extent to which a distribution is a dividend, see sections 312 and 316 of the Code and the regulations in this part under sections 312 and 316.

(m) Split-dollar and other life insurance arrangements--(1) Split-dollar life insurance arrangements--(i) Distribution of economic benefits. The provision by a corporation to its shareholder pursuant to a split-dollar life insurance arrangement, as defined in §1.61-22(b)(1) or (2), of economic benefits described in §1.61-22(d), or of amounts described in §1.61-22(e), is treated as a distribution of property, the amount of which is determined under §1.61-22(d) and (e), respectively.

(ii) Distribution of entire contract or undivided interest therein. A transfer (within the meaning of §1.61-22(c)(3)) of the ownership of a life insurance contract (or an undivided interest therein) that is part of a split-dollar life insurance arrangement is a distribution of property, the amount of which is determined pursuant to §1.61-22(g)(1) and (2).

(2) Other life insurance arrangements. A payment by a corporation on behalf of a shareholder of premiums on a life insurance contract or an undivided interest therein that is owned by the shareholder constitutes a distribution of property, even if such payment is not part of a split-dollar life insurance arrangement under §1.61-22(b).

(3) When distribution is made--(i) In general. Except as provided in paragraph (m)(3)(ii) of this section, paragraph (c) of this section applies to determine when a distribution described in paragraph (m)(1) or (2) of this section is taken into account by a shareholder.

(ii) Exception. Notwithstanding paragraph (c) of this section, a distribution described in paragraph (m)(1)(ii) of this section is treated as made by a corporation to its shareholder at the time that the life insurance contract, or an undivided interest therein, is transferred (within the meaning of §1.61-22(c)(3)) to the shareholder.

(4) Applicability date--(i) General rule. This paragraph (m) applies to split-dollar and other life insurance arrangements entered into after September 17, 2003. For purposes of this paragraph (m)(4), a split-dollar life insurance arrangement is entered into as determined under §1.61-22(j)(1)(ii).

(ii) Modified arrangements treated as new arrangements. If a split-dollar life insurance arrangement entered into on or before September 17, 2003, is materially modified (within the meaning of §1.61-22(j)(2)) after September 17, 2003, the arrangement is treated as a new arrangement entered into on the date of the modification.

(n) Applicability date. Paragraphs (a) through (c), (e), (g), and (h) of this section apply to distributions under section 301 made after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Par. 3. Section 1.356-1 is amended by revising paragraph (f) to read as follows:
§1.356-1 Receipt of additional consideration in connection with an exchange.

* * * * *

(f) See §1.301-1(j) for certain transactions that are not within the scope of section 356.

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Par. 4. Section 1.368-2 is amended by revising the last sentence of paragraph (m)(3)(iii) to read as follows:

§1.368-2 Definition of terms.

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(m) * * *

(3) * * *

(iii) * * * See §1.301-1(j).

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§ 1.902-1 [Amended]

Par.5. In § 1.902-1(a)(12), remove the language “§1.301-1(b)” and add in its place “§1.301-1(c)”.

§ 1.902-3 [Amended]

Par.6. In § 1.902-3(a)(7), remove the language “§1.301-1(b)” and add in its place “§1.301-1(c)”.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: August 18, 2021.

Mark J. Mazur,

Acting Assistant Secretary of the Treasury (Tax Policy).